
HOUSE BILL 3049

State of Washington

60th Legislature

2008 Regular Session

By Representatives Williams, Priest, Conway, Roach, VanDeWege, Sullivan, Simpson, Hurst, Kenney, and Kelley; by request of LEOFF Plan 2 Retirement Board

Read first time 01/21/08. Referred to Committee on Appropriations.

1 AN ACT Relating to employer contributions to an account formed
2 under section 457 of the United States internal revenue code for the
3 benefit of members of the law enforcement officers' and firefighters'
4 retirement system plan 2; amending RCW 41.26.030; and providing an
5 effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 41.26.030 and 2005 c 459 s 1 are each amended to read
8 as follows:

9 As used in this chapter, unless a different meaning is plainly
10 required by the context:

11 (1) "Retirement system" means the "Washington law enforcement
12 officers' and firefighters' retirement system" provided herein.

13 (2)(a) "Employer" for plan 1 members, means the legislative
14 authority of any city, town, county, or district or the elected
15 officials of any municipal corporation that employs any law enforcement
16 officer and/or firefighter, any authorized association of such
17 municipalities, and, except for the purposes of RCW 41.26.150, any
18 labor guild, association, or organization, which represents the
19 firefighters or law enforcement officers of at least seven cities of

1 over 20,000 population and the membership of each local lodge or
2 division of which is composed of at least sixty percent law enforcement
3 officers or firefighters as defined in this chapter.

4 (b) "Employer" for plan 2 members, means the following entities to
5 the extent that the entity employs any law enforcement officer and/or
6 firefighter:

7 (i) The legislative authority of any city, town, county, or
8 district;

9 (ii) The elected officials of any municipal corporation;

10 (iii) The governing body of any other general authority law
11 enforcement agency; or

12 (iv) A four-year institution of higher education having a fully
13 operational fire department as of January 1, 1996.

14 (3) "Law enforcement officer" beginning January 1, 1994, means any
15 person who is commissioned and employed by an employer on a full time,
16 fully compensated basis to enforce the criminal laws of the state of
17 Washington generally, with the following qualifications:

18 (a) No person who is serving in a position that is basically
19 clerical or secretarial in nature, and who is not commissioned shall be
20 considered a law enforcement officer;

21 (b) Only those deputy sheriffs, including those serving under a
22 different title pursuant to county charter, who have successfully
23 completed a civil service examination for deputy sheriff or the
24 equivalent position, where a different title is used, and those persons
25 serving in unclassified positions authorized by RCW 41.14.070 except a
26 private secretary will be considered law enforcement officers;

27 (c) Only such full time commissioned law enforcement personnel as
28 have been appointed to offices, positions, or ranks in the police
29 department which have been specifically created or otherwise expressly
30 provided for and designated by city charter provision or by ordinance
31 enacted by the legislative body of the city shall be considered city
32 police officers;

33 (d) The term "law enforcement officer" also includes the executive
34 secretary of a labor guild, association or organization (which is an
35 employer under RCW 41.26.030(2)) if that individual has five years
36 previous membership in the retirement system established in chapter
37 41.20 RCW. The provisions of this subsection (3)(d) shall not apply to
38 plan 2 members; and

1 (e) The term "law enforcement officer" also includes a person
2 employed on or after January 1, 1993, as a public safety officer or
3 director of public safety, so long as the job duties substantially
4 involve only either police or fire duties, or both, and no other duties
5 in a city or town with a population of less than ten thousand. The
6 provisions of this subsection (3)(e) shall not apply to any public
7 safety officer or director of public safety who is receiving a
8 retirement allowance under this chapter as of May 12, 1993.

9 (4) "Firefighter" means:

10 (a) Any person who is serving on a full time, fully compensated
11 basis as a member of a fire department of an employer and who is
12 serving in a position which requires passing a civil service
13 examination for firefighter, and who is actively employed as such;

14 (b) Anyone who is actively employed as a full time firefighter
15 where the fire department does not have a civil service examination;

16 (c) Supervisory firefighter personnel;

17 (d) Any full time executive secretary of an association of fire
18 protection districts authorized under RCW 52.12.031. The provisions of
19 this subsection (4)(d) shall not apply to plan 2 members;

20 (e) The executive secretary of a labor guild, association or
21 organization (which is an employer under RCW 41.26.030(2) as now or
22 hereafter amended), if such individual has five years previous
23 membership in a retirement system established in chapter 41.16 or 41.18
24 RCW. The provisions of this subsection (4)(e) shall not apply to plan
25 2 members;

26 (f) Any person who is serving on a full time, fully compensated
27 basis for an employer, as a fire dispatcher, in a department in which,
28 on March 1, 1970, a dispatcher was required to have passed a civil
29 service examination for firefighter;

30 (g) Any person who on March 1, 1970, was employed on a full time,
31 fully compensated basis by an employer, and who on May 21, 1971, was
32 making retirement contributions under the provisions of chapter 41.16
33 or 41.18 RCW; and

34 (h) Any person who is employed on a full-time, fully compensated
35 basis by an employer as an emergency medical technician.

36 (5) "Department" means the department of retirement systems created
37 in chapter 41.50 RCW.

1 (6) "Surviving spouse" means the surviving widow or widower of a
2 member. "Surviving spouse" shall not include the divorced spouse of a
3 member except as provided in RCW 41.26.162.

4 (7)(a) "Child" or "children" means an unmarried person who is under
5 the age of eighteen; or (~~mentally or physically handicapped~~) has
6 mental or physical disabilities as determined by the department, except
7 a (~~handicapped~~) person with disabilities in the full time care of a
8 state institution, who is:

9 (i) A natural born child;

10 (ii) A stepchild where that relationship was in existence prior to
11 the date benefits are payable under this chapter;

12 (iii) A posthumous child;

13 (iv) A child legally adopted or made a legal ward of a member prior
14 to the date benefits are payable under this chapter; or

15 (v) An illegitimate child legitimized prior to the date any
16 benefits are payable under this chapter.

17 (b) A person shall also be deemed to be a child up to and including
18 the age of twenty years and eleven months while attending any high
19 school, college, or vocational or other educational institution
20 accredited, licensed, or approved by the state, in which it is located,
21 including the summer vacation months and all other normal and regular
22 vacation periods at the particular educational institution after which
23 the child returns to school.

24 (8) "Member" means any firefighter, law enforcement officer, or
25 other person as would apply under subsections (3) or (4) of this
26 section whose membership is transferred to the Washington law
27 enforcement officers' and firefighters' retirement system on or after
28 March 1, 1970, and every law enforcement officer and firefighter who is
29 employed in that capacity on or after such date.

30 (9) "Retirement fund" means the "Washington law enforcement
31 officers' and firefighters' retirement system fund" as provided for
32 herein.

33 (10) "Employee" means any law enforcement officer or firefighter as
34 defined in subsections (3) and (4) of this section.

35 (11)(a) "Beneficiary" for plan 1 members, means any person in
36 receipt of a retirement allowance, disability allowance, death benefit,
37 or any other benefit described herein.

1 (b) "Beneficiary" for plan 2 members, means any person in receipt
2 of a retirement allowance or other benefit provided by this chapter
3 resulting from service rendered to an employer by another person.

4 (12)(a) "Final average salary" for plan 1 members, means (i) for a
5 member holding the same position or rank for a minimum of twelve months
6 preceding the date of retirement, the basic salary attached to such
7 same position or rank at time of retirement; (ii) for any other member,
8 including a civil service member who has not served a minimum of twelve
9 months in the same position or rank preceding the date of retirement,
10 the average of the greatest basic salaries payable to such member
11 during any consecutive twenty-four month period within such member's
12 last ten years of service for which service credit is allowed, computed
13 by dividing the total basic salaries payable to such member during the
14 selected twenty-four month period by twenty-four; (iii) in the case of
15 disability of any member, the basic salary payable to such member at
16 the time of disability retirement; (iv) in the case of a member who
17 hereafter vests pursuant to RCW 41.26.090, the basic salary payable to
18 such member at the time of vesting.

19 (b) "Final average salary" for plan 2 members, means the monthly
20 average of the member's basic salary for the highest consecutive sixty
21 service credit months of service prior to such member's retirement,
22 termination, or death. Periods constituting authorized unpaid leaves
23 of absence may not be used in the calculation of final average salary.

24 (13)(a) "Basic salary" for plan 1 members, means the basic monthly
25 rate of salary or wages, including longevity pay but not including
26 overtime earnings or special salary or wages, upon which pension or
27 retirement benefits will be computed and upon which employer
28 contributions and salary deductions will be based.

29 (b) "Basic salary" for plan 2 members, means salaries or wages
30 earned by a member during a payroll period for personal services,
31 including overtime payments, and shall include wages and salaries
32 deferred under provisions established pursuant to sections 403(b),
33 414(h), and 457 of the United States Internal Revenue Code, but shall
34 exclude lump sum payments for deferred annual sick leave, unused
35 accumulated vacation, unused accumulated annual leave, or any form of
36 severance pay. Basic salary includes all contributions made by an
37 employer to a member's account established pursuant to section 457 of
38 the United States internal revenue code even if the employer's

1 contributions are conditioned upon the member making contributions. In
2 any year in which a member serves in the legislature the member shall
3 have the option of having such member's basic salary be the greater of:

4 (i) The basic salary the member would have received had such member
5 not served in the legislature; or

6 (ii) Such member's actual basic salary received for nonlegislative
7 public employment and legislative service combined. Any additional
8 contributions to the retirement system required because basic salary
9 under (b)(i) of this subsection is greater than basic salary under
10 (b)(ii) of this subsection shall be paid by the member for both member
11 and employer contributions.

12 (14)(a) "Service" for plan 1 members, means all periods of
13 employment for an employer as a firefighter or law enforcement officer,
14 for which compensation is paid, together with periods of suspension not
15 exceeding thirty days in duration. For the purposes of this chapter
16 service shall also include service in the armed forces of the United
17 States as provided in RCW 41.26.190. Credit shall be allowed for all
18 service credit months of service rendered by a member from and after
19 the member's initial commencement of employment as a firefighter or law
20 enforcement officer, during which the member worked for seventy or more
21 hours, or was on disability leave or disability retirement. Only
22 service credit months of service shall be counted in the computation of
23 any retirement allowance or other benefit provided for in this chapter.

24 (i) For members retiring after May 21, 1971 who were employed under
25 the coverage of a prior pension act before March 1, 1970, "service"
26 shall also include (A) such military service not exceeding five years
27 as was creditable to the member as of March 1, 1970, under the member's
28 particular prior pension act, and (B) such other periods of service as
29 were then creditable to a particular member under the provisions of RCW
30 41.18.165, 41.20.160 or 41.20.170. However, in no event shall credit
31 be allowed for any service rendered prior to March 1, 1970, where the
32 member at the time of rendition of such service was employed in a
33 position covered by a prior pension act, unless such service, at the
34 time credit is claimed therefor, is also creditable under the
35 provisions of such prior act.

36 (ii) A member who is employed by two employers at the same time
37 shall only be credited with service to one such employer for any month
38 during which the member rendered such dual service.

1 (b) "Service" for plan 2 members, means periods of employment by a
2 member for one or more employers for which basic salary is earned for
3 ninety or more hours per calendar month which shall constitute a
4 service credit month. Periods of employment by a member for one or
5 more employers for which basic salary is earned for at least seventy
6 hours but less than ninety hours per calendar month shall constitute
7 one-half service credit month. Periods of employment by a member for
8 one or more employers for which basic salary is earned for less than
9 seventy hours shall constitute a one-quarter service credit month.

10 Members of the retirement system who are elected or appointed to a
11 state elective position may elect to continue to be members of this
12 retirement system.

13 Service credit years of service shall be determined by dividing the
14 total number of service credit months of service by twelve. Any
15 fraction of a service credit year of service as so determined shall be
16 taken into account in the computation of such retirement allowance or
17 benefits.

18 If a member receives basic salary from two or more employers during
19 any calendar month, the individual shall receive one service credit
20 month's service credit during any calendar month in which multiple
21 service for ninety or more hours is rendered; or one-half service
22 credit month's service credit during any calendar month in which
23 multiple service for at least seventy hours but less than ninety hours
24 is rendered; or one-quarter service credit month during any calendar
25 month in which multiple service for less than seventy hours is
26 rendered.

27 (15) "Accumulated contributions" means the employee's contributions
28 made by a member, including any amount paid under RCW 41.50.165(2),
29 plus accrued interest credited thereon.

30 (16) "Actuarial reserve" means a method of financing a pension or
31 retirement plan wherein reserves are accumulated as the liabilities for
32 benefit payments are incurred in order that sufficient funds will be
33 available on the date of retirement of each member to pay the member's
34 future benefits during the period of retirement.

35 (17) "Actuarial valuation" means a mathematical determination of
36 the financial condition of a retirement plan. It includes the
37 computation of the present monetary value of benefits payable to
38 present members, and the present monetary value of future employer and

1 employee contributions, giving effect to mortality among active and
2 retired members and also to the rates of disability, retirement,
3 withdrawal from service, salary and interest earned on investments.

4 (18) "Disability board" for plan 1 members means either the county
5 disability board or the city disability board established in RCW
6 41.26.110.

7 (19) "Disability leave" means the period of six months or any
8 portion thereof during which a member is on leave at an allowance equal
9 to the member's full salary prior to the commencement of disability
10 retirement. The definition contained in this subsection shall apply
11 only to plan 1 members.

12 (20) "Disability retirement" for plan 1 members, means the period
13 following termination of a member's disability leave, during which the
14 member is in receipt of a disability retirement allowance.

15 (21) "Position" means the employment held at any particular time,
16 which may or may not be the same as civil service rank.

17 (22) "Medical services" for plan 1 members, shall include the
18 following as minimum services to be provided. Reasonable charges for
19 these services shall be paid in accordance with RCW 41.26.150.

20 (a) Hospital expenses: These are the charges made by a hospital,
21 in its own behalf, for

22 (i) Board and room not to exceed semiprivate room rate unless
23 private room is required by the attending physician due to the
24 condition of the patient.

25 (ii) Necessary hospital services, other than board and room,
26 furnished by the hospital.

27 (b) Other medical expenses: The following charges are considered
28 "other medical expenses", provided that they have not been considered
29 as "hospital expenses".

30 (i) The fees of the following:

31 (A) A physician or surgeon licensed under the provisions of chapter
32 18.71 RCW;

33 (B) An osteopathic physician and surgeon licensed under the
34 provisions of chapter 18.57 RCW;

35 (C) A chiropractor licensed under the provisions of chapter 18.25
36 RCW.

37 (ii) The charges of a registered graduate nurse other than a nurse

1 who ordinarily resides in the member's home, or is a member of the
2 family of either the member or the member's spouse.

3 (iii) The charges for the following medical services and supplies:

4 (A) Drugs and medicines upon a physician's prescription;

5 (B) Diagnostic X-ray and laboratory examinations;

6 (C) X-ray, radium, and radioactive isotopes therapy;

7 (D) Anesthesia and oxygen;

8 (E) Rental of iron lung and other durable medical and surgical
9 equipment;

10 (F) Artificial limbs and eyes, and casts, splints, and trusses;

11 (G) Professional ambulance service when used to transport the
12 member to or from a hospital when injured by an accident or stricken by
13 a disease;

14 (H) Dental charges incurred by a member who sustains an accidental
15 injury to his or her teeth and who commences treatment by a legally
16 licensed dentist within ninety days after the accident;

17 (I) Nursing home confinement or hospital extended care facility;

18 (J) Physical therapy by a registered physical therapist;

19 (K) Blood transfusions, including the cost of blood and blood
20 plasma not replaced by voluntary donors;

21 (L) An optometrist licensed under the provisions of chapter 18.53
22 RCW.

23 (23) "Regular interest" means such rate as the director may
24 determine.

25 (24) "Retiree" for persons who establish membership in the
26 retirement system on or after October 1, 1977, means any member in
27 receipt of a retirement allowance or other benefit provided by this
28 chapter resulting from service rendered to an employer by such member.

29 (25) "Director" means the director of the department.

30 (26) "State actuary" or "actuary" means the person appointed
31 pursuant to RCW 44.44.010(2).

32 (27) "State elective position" means any position held by any
33 person elected or appointed to statewide office or elected or appointed
34 as a member of the legislature.

35 (28) "Plan 1" means the law enforcement officers' and firefighters'
36 retirement system, plan 1 providing the benefits and funding provisions
37 covering persons who first became members of the system prior to
38 October 1, 1977.

1 (29) "Plan 2" means the law enforcement officers' and firefighters'
2 retirement system, plan 2 providing the benefits and funding provisions
3 covering persons who first became members of the system on and after
4 October 1, 1977.

5 (30) "Service credit year" means an accumulation of months of
6 service credit which is equal to one when divided by twelve.

7 (31) "Service credit month" means a full service credit month or an
8 accumulation of partial service credit months that are equal to one.

9 (32) "General authority law enforcement agency" means any agency,
10 department, or division of a municipal corporation, political
11 subdivision, or other unit of local government of this state, and any
12 agency, department, or division of state government, having as its
13 primary function the detection and apprehension of persons committing
14 infractions or violating the traffic or criminal laws in general, but
15 not including the Washington state patrol. Such an agency, department,
16 or division is distinguished from a limited authority law enforcement
17 agency having as one of its functions the apprehension or detection of
18 persons committing infractions or violating the traffic or criminal
19 laws relating to limited subject areas, including but not limited to,
20 the state departments of natural resources and social and health
21 services, the state gambling commission, the state lottery commission,
22 the state parks and recreation commission, the state utilities and
23 transportation commission, the state liquor control board, and the
24 state department of corrections.

25 NEW SECTION. **Sec. 2.** This act takes effect July 1, 2012.

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